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In The

SUPREME COURT OF THE UNITED STATES
October Term, 1976

No. 76-536

Pamela Jean Pattison,

Petitioner

v.

Kelly Spratlan,

Respondent

ANSWER TO

PETITION FOR WRIT OF CERTIORARI TO THE

COURT OF CIVIL APPEALS OF TEXAS, TYLER

L. Michael Thompson
Assistant District Attorney
Smith County Courthouse
Tyler, Texas 75702

Attorney for Respondent

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To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Respondent, Kelly Spratlan, hereby makes this her answer to the petition for writ of certiorari to review the decision of the Texas Court of Civil Appeals, Tyler, affirmed as modified by the Supreme Court of Texas, said holding raising no federal question and presenting no conflict with federal decisions advanced by Petitioner.

STATEMENT OF THE CASE

Respondent, in her capacity as Supervisor of Tyler-Smith County Child Welfare Unit, brought suit to terminate the parent-child relationship between Petitioner and her minor children. The basis of the suit was an irrevocable Affidavit of Relinquishment of Parental Rights which had been signed by Petitioner prior thereto and which was filed of record in the case. Petitioner in her Affidavit designated the Tyler-Smith County Child Welfare Unit as managing conservator of her children. Counsel of record for Petitioner witnessed the execution of the Affidavit of Relinquishment.

Trial without a jury was held before the Court of Domestic Relations and Petitioner appeared by her attorney of record. The Court found that Petitioner executed the Affidavit of Relinquishment in accordance with Section 15.03, Texas Family Code, and further found that termination of Petitioner's parental rights would be in the best interest of the minor children. Accordingly, the Court terminated the parent-child relationship and appointed Respondent as managing conservator.

Petitioner appealed to the Court of Civil Appeals for the Twelfth Supreme Judicial District of Texas on five points of error. Judgment of the trial court was affirmed and Petitioner appealed to the Supreme Court of Texas. In a per curiam decision, judgment of the Court of Civil Appeals was affirmed as modified to strike assessment of costs of appeal against Petitioner.

ARGUMENT

Respondent addresses the two questions presented by Petitioner for this Court's review and would respectfully show that they do not merit a grant of certiorari in this case.

The challenge to the constitutionality of Section 15.03, Texas Family Code is without substance. This statute establishés the requisites of an Affidavit of Relinquishment of Parental Rights. An Affidavit pursuant to Section 15.03 may constitute grounds for involuntary termination of parental rights under Section 15.02 (1) (K), Texas Family Code (A-2), and for this reason the succeeding statute prescribes that information which must be contained in the Affidavit. The extensive requirements of Section 15.03 (A-3) purport to ensure that the parent relinquishing his or her rights is fully aware of the nature and consequences of such an act. To protect the parent from misrepresentation or overreaching, Section 15.03 (a) requires that the Affidavit of Relinquishment be witnessed by two credible persons and be verified before a person authorized to take oaths.

Respondent submits that said Affidavit is not subject to any constitutional infirmity. There is nothing vague, indefinite, or overbroad about the specifically enumerated contents prescribed by Section 15.03. Further, contrary to what Petitioner asserts, the Affidavit alone is not sufficient to terminate and no termination can be effected outside of judicial proceedings. Section 15.02 (2) provides that,

in addition to an irrevocable Affidavit of Relinquishment, the Court must find that termination is in the best interest of the child.

It is to be noted that Section 15.03 (d) makes irrevocable an Affidavit that designates as the managing conservator of the child the State Department of Public Welfare or authorized agency. A statement to this effect is included in the Affidavit to alert the parent that relinquishment is potentially a permanent legal step. Accordingly, the evidentiary burden is lightened for an authorized child placement service in termination proceedings. The parent's voluntary relinquishment by proper affidavit is strong evidence of the parent's intent and that the best interest of the child is served by placing conservatorship in an authorized child welfare agency. There is no irrebuttable presumption raised here, contrary to what Petitioner asserts, and the statute provides for none. Therefore, the irrevocable Affidavit presents no conflict with the prior decisions of this Court, Vlandis v. Kline, 412 U.S. 441 (1973), and Stanley v. Illinois, 405 U.S. 645 (1972), both of which are inapposite to this case.

Petitioner's second question presented for review raises no constitutional issue at all. By complaining of a denial of statement of facts, Petitioner is attempting to invoke this Court's jurisdiction in a final effort to correct her failure to follow the procedural rules below. Rules 377 and 380, Texas Rules of Civil Procedure (A-5, A-7), provide the

method whereby an appealing party is to obtain the statement of facts. Assuming that Petitioner would qualify as a pauper (although she was married to her attorney of record at the time the case was heard), the record has nothing to show that Petitioner presented her pauper's application to the trial court. If, in fact, Petitioner applied for a free statement of facts and the trial court refused to rule on the matter, Petitioner had further remedy by way of writ of mandamus from the Court of Civil Appeals to compel the trial court to order preparation of the statement of facts.

Although Petitioner was granted an extension of time by the Court of Civil Appeals in which to secure and present the record for review, she failed to do so and cannot now be heard to complain about her own failure to comply. No question of due process is raised by this lack of due diligence on the part of the appealing party.

CONCLUSION

There is no federal question of substance presented by the petition for writ of certiorari and said petition therefore merits no review by this Court. Respondent respectfully urges that the application for certiorari in all things be denied.

Respectfully submitted,

L. MICHAEL THOMPSON
Assistant District Attorney
Smith County Courthouse
Tyler, Texas 75702

Attorney for Respondent

CERTIFICATE OF SERVICE

The undersigned attorney of record for respondent hereby certifies that a true copy hereof was served upon all parties required to be served by depositing the same in the United States Post Office at Tyler, Texas, as prepaid first class certified mail, addressed to Mr. Jerry Mack Hyde, Attorney for Petitioner, P. O. Box 188, Tyler, Texas 75710, on the 12th day of November, 1976.

L. MICHAEL THOMPSON

Section 15.02 Involuntary Termination of Parental Rights

A petition requesting termination of the parent-child relationship with respect to a parent who is not the petitioner may be granted if the court finds that:

(1) the parent has:

(A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return; or

(B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months; or

(C) voluntarily left the child alone or in the possession of another not the parent and, although expressing an intent to return, failed to do so without providing adequate support of the child and remained away for a period of at least six months; or

(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child; or

(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child; or

(F) failed to support the child in accordance with his ability during a period of one year ending within six months of the date of the filing of the petition; or

(G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence; or

(H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth; or

(I) contumaciously refused to submit to a reasonable and lawful order of a court under Section 34.05 of this code; or

(J) been the major cause of:

(i) the failure of the child to be enrolled in school as required by the Texas Education Code; or

(ii) the child's absence from his home without the consent of his parents or guardian for a substantial length of time or without the intent to return; or

(K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by Section 15.03 of this code; and in addition, the court further finds that

(2) termination is in the best interest of the child.

Section 15.03 Affidavit of Relinquishment of Parental Rights

(a) An affidavit for voluntary relinquishment of parental rights must be signed after the birth of the child by the parent, whether or not a minor, whose parental rights are to be relinquished, witnessed by two credible persons, and verified before any person authorized to take oaths.

(b) The affidavit must contain:

(1) the name, address, and age of the parent whose parental rights are being relinquished;

(2) the name, age and birthdate of the child;

(3) the names and addresses of the guardians of the person and estate of the child, if any;

(4) a statement that the affiant is or is not presently obligated by court order to make payments for the support of the child;

(5) a full description and statement of value of all property owned or possessed by the child;

(6) allegations that termination of the parent-child relationship is in the best interest of the child;

(7) one of the following, as applicable:

(A) the name and address of the other parent;

(B) a statement that the parental rights of the other parent have been terminated by death or court order; or

(C) a statement that the child is not the legitimate child of the father and that an affidavit of

status of child has been executed as provided by Section 15.04 of this code;

(8) a statement that the parent has been informed of his parental rights, powers, duties, and privileges; and

(9) a statement that the relinquishment is revocable, or that the relinquishment is irrevocable, or that the relinquishment is irrevocable for a stated period of time.

(c) The affidavit may contain:

(1) a designation of any qualified person, the State Department of Public Welfare, or any authorized agency as managing conservator of the child;

(2) a waiver of process in a suit to terminate the parent-child relationship brought under Section 15.02 (1) (K) of this code, or in a suit to terminate joined with a petition for adoption under Section 16.03 (b) of this code; and

(3) a consent to the placement of the child for adoption by the State Department of Public Welfare or by an agency authorized by the State Department of Public Welfare to place children for adoption.

(d) An affidavit of relinquishment of parental rights which designates as the managing conservator of the child the State Department of Public Welfare or an agency authorized by the State Department of Public Welfare to place children for adoption if irrevocable. Any other affidavit of relinquishment is revocable unless it expressly provides that it is irrevocable for a stated period of time not to exceed 60 days after the date of its execution.

Rule 377 Statement of Facts

(a) Testimony. The testimony of the witnesses need not be in narrative form but may be in question and answer form. A party may prepare and file with the clerk a condensed statement in narrative form of all or part of the testimony and deliver a true copy thereof to the opposing party or his counsel, and such opposing party, if dissatisfied with the narrative statement, may require the testimony in question and answer form to be substituted for all or part thereof.

(b) Abbreviation of Statement. All matters not essential to the decision of the questions presented on appeal shall be omitted. Formal parts of all exhibits and more than one copy of any document appearing in the transcript or the statement of facts shall be excluded. All documents shall be abridged by omitting all irrelevant and formal portions thereof.

(c) Where a request is made of the official court reporter for the preparation of a transcript of all or any part of the evidence adduced on the trial of the case, or when, with or without such a request, a statement of facts is filed or offered for filing by appellant, the appellant shall promptly deliver or mail to the appellee or his counsel and file with the clerk of the court a designation in writing of the portions of the evidence desired, and shall specify the portions desired in narrative form, if any, and the portions desired in question and answer form, if any, and the portions that are desired to be omitted. Within ten days thereafter any other party to the appeal may file a designation in writing of any additional portions of the

evidence to be included, specifying the portions desired in narrative form, if any, and the portions desired in question and answer form, if any.

(d) Approval of Trial Court Unnecessary. It shall be unnecessary for the statement of facts to be approved by the trial court or judge thereof when agreed to by the parties. If any difference arises as to whether the record truly discloses what occurred in the trial court, or if the opposing party fails to agree or to disagree within ten days after being furnished with a copy of the proposed statement of facts, the matter shall be submitted to and settled by the trial court or judge thereof and the statement of facts be by him made to conform to the truth.

(e) If either party arbitrarily requires in either narrative or question and answer form more of the testimony than is necessary, he shall be required to pay the cost thereof, even though he is successful on the appeal.

(f) The official court reporter shall include as a portion of his certification the amount of his charges for preparation of the statement of facts.

Rule 380 Free Statement of Facts on Appeal for Paupers

In any case where the appellant has made the proof required to appeal his case without bond, the court or judge upon application of appellant shall order the official reporter to make a transcript in narrative form, in duplicate, and to deliver the same to said party, but such court reporter shall receive no pay for same.